

NOV 07 2005

Docket No: 38-21(52578)B

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of Jingrui Wu et al.
Serial No: 10/678,588
Filed: 10/02/2003
For: Yield-Improved Transgenic Plants

Art Unit: 1638
Examiner: Vinod Kumar

Response To Restriction Requirement

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Response to the Office Action mailed October 7, 2005 with a shortened statutory period of one month to reply setting forth a requirement to elect a single species, applicant hereby traverses the requirement and provisionally elects SEQ ID NO:8.

Applicant submits that the PTO position that that each sequence is deemed to normally constitute an independent and distinct invention is (a) an arbitrary position when applied generically without consideration of the claimed subject matter and (b) an unsupported position when applied in this particular application. The specification shows that the identified sequences have a unique property of improving yield in a crop of transgenic plants grown under water deficit from seed the having recombinant DNA characterized by the identified sequences. A requirement to elect but one of these sequences is especially pernicious as it unduly divides the unifying aspects of of applicant's claims. Reconsideration and withdrawal of the restriction requirement is respectfully requested.

Certificate of Facsimile Transmittal - This communication is being facsimile transmitted to the USPTO via the Central FAX number, i.e. 571-273-8300, on November 7, 2005.



Thomas E. Kelley
Registration No. 29,938
Applicant's Attorney
Phone: 860-572-5274

BEST AVAILABLE COPY